IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITIN NO.6179 OF 2006

Smt.Chandrabai M. Pol
(since deceased through legal heirs)
Mr.Dadasaheb T. Pol ....Petitioner
V/s.
Tukaram M. Pol & Ors. ....Respondents

Mr.R.V. Bansode for the Petitioner.
Ms.Vaidehi Mhaispurkar for Respondent No.17.

CORAM : S.J. VAZIFDAR, J.
DATED : 10TH JANUARY, 2007.

P.C. :

Mentioned, not on board.

2. Rule. Rule returnable forthwith and by consent heard finally.

3. By the impugned order, the Plaintiff/Petitioner's application for amendment of the plaint was rejected. The amendment was sought only in view of the amendment to the written statement after a period of ten years whereby Defendant No.17 claims to have been in possession.

3. It is not necessary for the Plaintiff to deny

in the plaint by amending the assertion in the written statement, in view of the fact that in the plaint the Plaintiff has already asserted that the Plaintiff is in possession. Nor is it necessary to amend the plaint by introducing subsequent facts relating to independent proceedings in which orders have been passed allegedly rejecting the contention of Defendant No.17 regarding the possession. The same can always be introduced in the evidence in support of the Plaintiff's case regarding possession.

4. In that view of the matter, the amendment was really unnecessary.

5. In any event the Plaintiff would be entitled to challenge the impugned order from the final decree, if necessary.

6. In view of the above clarification, the rule is discharged.